

SENATE BILL 3517
By Black

AN ACT to amend Tennessee Code Annotated, Title 29,
Chapter 5, relative to arbitration.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 29-5-302, is amended by deleting subsection (a) and substituting instead the following:

(a) A written agreement to submit any existing controversy to arbitration, or to submit to arbitration explicitly specified controversies thereafter arising between the parties, is valid, enforceable, and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract; provided, all such contracts shall be in writing and signed by the parties; provided further, all such contracts shall be separate from contracts that reflect any agreements by or between the parties other than the agreement to arbitrate; provided further, controversies not explicitly delineated to be arbitrated shall not be subject to arbitration under such a contract; provided further, all issues with respect to what controversies such a contract binds the parties to arbitrate shall never be decided by arbitrators, either before arbitration commences or after arbitration commences; provided further, arbitrators are never empowered to decide any issues of law, if, when the issue is presented for a decision by arbitrators, any party objects in writing to a decision by the arbitrators; provided further, a party in arbitration, when an issue of law is presented for a decision by arbitrators, may provisionally object in writing, permit the arbitrators to rule on the issue of law and, thereby, preserve the right, at the conclusion of the arbitration, to present the preserved issue for plenary de novo review by a court; competent jurisdiction as a ground to vacate and/or to modify an arbitration award; provided further, no arbitrator, sua sponte, shall make any decision based on the arbitrator's interpretation of the law without first advising all of the parties to the arbitration, in writing, what the arbitrator's

interpretation is of what law and, thereafter, providing each party a minimum of seventy-two (72) hours either to object or provisionally object; provided further, should a party object to a decision by arbitrators on an issue of law, while arbitration is in progress and the arbitration cannot be completed without a decision on the question, the arbitration shall be suspended for application, more particularly described in § 29-5-303, invoking the jurisdiction of a court to decide the issue of law as expeditiously as possible, and, immediately after, the arbitration shall resume; provided further, the ruling of the court shall not be appealable until the conclusion of the arbitration and only as part of an appeal from an order confirming, vacating, or modifying an arbitration award, but, if and when appealed, the ruling shall be plenary reviewed, in the trial court, as an interlocutory ruling, and, on appeal, de novo.

SECTION 2. Tennessee Code Annotated, Section 29-5-303, is amended by deleting subsections (a) through (d) and substituting instead the following:

(a) On application of a party authenticated by evidence of the existence of an agreement described in § 29-5-302, and the refusal of a person claimed to be a party to the authenticated agreement to arbitrate, the court shall proceed to adjudicate, by summary judgment, if possible, and, if not by summary judgment, by a summary proceeding modeled after the mini-trial described in the Agreed Order Form that is Appendix D to Rule 31, Rules of the Supreme Court of Tennessee adapted for use with the judge or chancellor serving as the “neutral advisor” and without a mini-trial panel, after which, the court shall file an opinion, including written findings of fact and conclusions of laws, and an order on the objection.

(b) An application to stay or prohibit an arbitration proceeding shall be a civil action neither combined nor consolidated with any other civil action or any claims other than the arbitrability of claims asserted by one or more parties to be arbitrable and claimed by another or other parties not to be arbitrable.

(c) No adjudicator who adjudicates arbitrability issues raised pursuant to subsections (a) or (b) shall ever adjudicate any other claims by any party against any other party who disputed over whether the claims were arbitrable.

(d) Any civil action involving an issue adjudicated to be arbitrable shall be stayed from further adjudication until arbitration of the issue is completed; provided, the stay may be with respect to only the issue and not the entire civil action.

SECTION 3. Tennessee Code Annotated, Section 29-5-309, is amended by deleting such section in its entirety and substituting instead the following:

§ 29-5-309.

(a) An award shall be made within the time fixed therefore by the agreement or, if not so fixed, within such time as the court orders on application of a party. The parties may extend the time in writing either before or after the expiration thereof. A party waives the objection that an award was not made within the time required unless that party notifies the arbitrators of such objection prior to the delivery of the award to the other party; provided, an award that is not timely delivered and no waiver of timely delivery has been effectuated, by a writing signed by the waiving party under oath, is void ab initio without regard for any other factors.

(b) No arbitration award shall ever serve as a basis in any court for a ruling by a court that anything occurring in arbitration gave rise to a res judicata or a collateral estoppel preclusion in any parallel or subsequent court proceeding; provided, Tennessee Rules of Evidence, Rule 408 shall apply to provide all communications, including those of arbitrators, in arbitration to be privileged settlement talk.

SECTION 4. Tennessee Code Annotated, Section 29-5-313(a), is amended by deleting subdivisions (1) through (5) and substituting instead the following:

(1) The award was procured by corruption, fraud, or other undue means; provided, the word “undue” shall be liberally construed to include any means that does not comport with substantive or procedural due process;

(2) There was an appearance of partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or misconduct on the part of the arbitrator;

(3) The arbitrators exceeded their powers or in any way including, but not limited to, making any award or issuing a mandate of any kind based on a decision by the arbitrators on any contested issue of law or based on the arbitrators’ construction or interpretation of the arbitration agreement that is inconsistent with legal precedent dictating a different construction or interpretation or inconsistent with logic and reasonableness as determined by the court or otherwise with earmarks that the construction or interpretation was driven by an intention by the arbitrators to justify a result at the expense of rule of law; provided, arbitrators shall be strictly held to act only within the bounds of their powers so that any doubt, based on the record and on evidence, about whether arbitrators acted within the bounds of their powers shall be resolved against the arbitrators;

(4) The arbitrators refused to postpone the hearing upon sufficient cause being shown therefore or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of §29-5-306, as to prejudice the rights of a party; or

(5) There was no arbitration agreement and the objecting party raised the objection that there was no enforceable arbitration agreement in proceedings under §29-5-303 and, thereafter, did not participate in the arbitration. The fact that the relief was such that it could not or would not be granted by a court of law or equity is ground for vacating or refusing to confirm the award.

SECTION 5. Tennessee Code Annotated, Section 29-5-319, is amended by deleting subsection (a) and substituting instead the following:

(a) An appeal, interlocutory in nature but without discretion on the part of the trial court or court of appeals but otherwise appeal pursuant to Tennessee Rules of Appellate Procedure, Rule 9, may be taken from:

(1) An order denying or granting an application to compel arbitration made under § 29-5-303.

(2) An order made under § 29-5-303(b) granting an application to stay or to prohibit arbitration of a controversy or of an issue in dispute;

(3) An order confirming or denying confirmation of an award;

(4) An order modifying or correcting an award;

(5) An order vacating an award without directing a re-hearing; provided, an interlocutory appeal taken pursuant to this section shall not be a plenary appeal, shall be limited in scope exclusively to the appealable issues and shall have no preclusive effect on any issue subsequently raised by any party in a plenary appeal pursuant to subsection (6) below or in any civil action by any party to the arbitration except as to issues of fact and law actually arbitrated and inspective of what could have been but was not actually arbitrated; provided further, all appeals taken pursuant to this section shall be expedited by all deadlines and cutoff dates for appeals set out in the Tennessee Rules of Appellate Procedure being half the amount of time allowed for other appeals and by requiring the record on appeal to be delivered to the court of appeals within ten (10) days after the parties designate what is to be included therein and by the court of appeals advancing the appeal for disposition at the earliest time possible; and

(6) A judgment or decree entered pursuant to the provisions of this part.

SECTION 6. This act shall take effect July 1, 2006, the public welfare requiring it.